Q. Does that apply to Mrs. Costello too? A. That is true, that portion of the alphabet.

Q. If a bill is rendered on the 6th of the month and paid at any time during the balance of that month or during the first few days of the following month, when is it posted? A. It is posted on the 6th of the following month.

(834) Q. It is posted on the 6th of the following month? A. Following month, that is correct.

Q. So that, for example, if your ledger card shows a payment posted in the month of January, that payment might have been made and probably would have been made in December? A. That is correct.

Q. Because the bill was rendered in December? A. That is right.

Q. Mr. Kalmus, will you refer to Government's Exhibit 227-C and Government's Exhibit 227-B and tell me, on 227-B, what the amount posted in the month of January is? A. 154—

The Court: What year?

Mr. Christy: This is January 1947.

The Witness: 1947.

The Court: B covers '46 and '7, does it not?

Mr. Christy: I beg your pardon?

The Court: Doesn't 227-B cover two years?

Mr. Christy: That is correct.

The Court: You are asking for January 1947?

Mr. Christy: That is correct.

A. (Continuing) That amount is $154.57.

Q. Referring to Government's Exhibit 227-C, will you tell me the amount that was posted in the month of January, 1947 on that account? A. $184.01.

(835) Q. Would you make a computation as to the total of those two figures? A. $338.58.

Q. That is the total of the two? A. Of those two payments, yes.

Q. I show you Government's Exhibit 43 in evidence, which is the bank statement of Loretta Costello, and I call your attention to a withdrawal on the 23rd of December. Will you tell us what that amount is? A. $338.58.

Mr. Fennelly: What year, please?

Mr. Christy: This is the year 1947.

A. (Continuing) $338.58.

Q. That is the same figure which you have just given us? A. That is the total of those two payments.

Q. I show your Government's Exhibit 227 and I will ask you what figure is posted in January 1948. A. $251.38.

The Court: What was that?

The Witness: $251.38.

The Court: This is for what month and what year?

The Witness: This is January 1948.

The Court: Very well.

Mr. Christy: January 1948, your Honor.

The Court: In Exhibit B?

Mr. Chirsty: That is Exhibit 227, your Honor.

(836) The Court: Oh, Exhibit 227. Very well.

Q. Again I show you Government's Exhibit 43 in evidence and call your attention to a withdrawal on the date December 18, 1947. Will you tell us what that figure is? A. $251.38.

Q. That is the figure that you have just given us? A. That is correct.

Q. Again on Exhibit 227 in evidence I call your attention to the payment made in January 1949 and I ask you what that figure was? A. $170.47.

Q. Again on Government's Exhibit 43 in evidence I call your attention to a withdrawal on December 21, 1948 and I ask you what that figure is? A. $170.47.

Q Mr. Kalmus, when you added those figures a minute ago what was your total? A. $338.58.

Q. I show you Government's Exhibit 43 in evidence again and I call your attention to a withdrawal on December 23, 1946 and ask you what that figure is? A. $338.58.

Q. That is the same figure that you totaled. So that these figures which you have identified on Government's Exhibit 43 were paid in the month of December although posted in the month following, January? A. That is right.

(837) Q. Mr. Kalmus, have you computed the totals paid on the account of Frank Costello? A. Yes, I have.

Q. Will you tell us how much was paid in 1946? A. $159.25.

Q. And 1947? A. $281.40.

Q. 1948? A. $6.21.

Q. 1949? A. $293.64.

Q. Now, on Mrs. Costello's account.

The Court: What was that 1948 item?

The Witness: $6.21.

The Court: And 1946?

The Witness: $159.25.

The Court: Very well. Thank you.

The Witness: You are welcome.

A. You want the same figures—

Q. Mrs. Costello's account in the year 1946. A. $616.23.

Q. 1947? A. $432.86.

Q 1948? A. $772.77.

Q. 1949? A. $554.21.

Mr. Christy: No further questions, your Honor.

Sam Kalmus—for Government—Cross

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir, I (838) did not.

Mr. Fennelly: Will your Honor excuse me just a minute while I look at these?

The Court: Yes.

(A pause.)

Q. Will you tell me the items that make up the payment for the year 1949, please, on Mrs. Costello's account? Could you just give me the items? A. On Mrs. Costello's account for 1949?

Q. Yes. A. 171—you want them individually?

Q. Yes, if you would? A. $171.82. $31.36.

Q. Yes? A. $92.96.

Q. Yes? A. $91.80.

Q. Yes? A. $27.27.

Q. Yes? A. $21.42.

Q. Yes? A. $20.81. $96.77. That is all.

Q. The January item, that would include the purchases during the Christmas season, wouldn't it? A. Yes, it would include the purchases made from the 7th day of December of the year prior to the 6th day of January of 1946.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Kalmus.

The Court: All right, you are excused.

(Witness excused.)

(838-A) Mr. Christy: The Government calls Leonard Brainson.

The Court: The name is Brady?

Mr. Christy: Brainson, B-r-a-i-n-s-o-n.

(839) LEONARD BRAINSON, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Brainson, where do you live? A. 393 West End Avenue.

Q. Where are you employed presently? A. Fabian Theatres.

Q. How long have you worked with the Fabian Theatres? A. Since last summer.

Q. Prior to that where did you work, sir? A. Brainson, Incorporated.

Q. And for how long did you work for Brainson? A. Oh, about 15 years.

Q. What were your duties when you were working in Brainson? A. Bookkeeper.

Q. Will you tell us what Brainson, Incorporated, was? A. They were custom tailors, men's custom tailors.

Q. Where were they located? A. 9 East 37th.

Q. I beg your pardon? A. 9 East 37th.

Q. Is Brainson still operating? A. No, they are out of business.

Q. While you were at Brainson's were you familiar with the books kept by Brainson, Incorporated? A. Yes.

(840) Q. In fact, did you keep some of those books yourself? A. Yes.

Q. Was Frank Costello a customer of yours? A. Yes.

Q. Can you identify Mr. Costello? A. That is Mr. Costello standing up (indicating).

Mr. Christy: May the record indicate that the witness has identified Mr. Costello?

The Court: Yes.

Q. Mr. Brainson, do you now have access to the books and records of Brainson? A. Yes.

Q. Even though it has ceased operation? A. Yes.

Q. And have you brought with you a ledger card relating to the account of Frank Costello? A. I have.

Q. May I have it, sir? A. (Witness hands to Mr. Christy).

(Marked Government's Exhibit 228 for identification.)

Q. Mr. Brainson, I show you Government's Exhibit 228 and I ask you if you will tell us what that is: A. It is a page that shows what Mr. Costello bought.

The Court: Is it a page from a ledger?

The Witness: Ledger page. And on one side is (841) the clothes and the other side are the payments.

The Court: Does it represent whatever transactions the ~~defendant~~ Frank Costello had with Brainson, Incorporated?

The Witness: Yes.

The Court: Very well. For what period?

Q. What years does that cover? A. 1946 to 1952.

Q. At the time Brainson's was operating, was that a record kept in the regular course of business? A. Yes.

Q. Was it the regular course of Brainson's business to keep such a record? A. Surely, yes.

Mr. Christy: Your Honor, the Government offers so much of Government's Exhibit 228 for identification as pertains to the years 1946, '7, '8 and '9.

The Court: Very well.

Leonard Brainson—for Government—Cross

Mr. Christy: May we substitute an appropriately blocked-out photostat?

The Court: You may.

Mr. Fennelly: No objection.

(Government's Exhibit 228 for identification received in evidence.)

(Mr. Christy hands exhibit to witness)

Q. Referring to Government's Exhibit 228, Mr. Brainson, does that carry items on there for custom (842) tailored clothes? A. Yes.

Q. Was Brainson in the business of selling ready-made clothes? A. Custom-made clothes.

Q. Only custom-made clothes? A. Yes.

Q. So the purchases on here are for custom-tailored clothes? A. That is right.

Q. Referring to this Exhibit 228 in evidence, will you tell us how much was paid in the year 1946? A. $887.58.

Q. And will you tell us how much was paid in the year 1947? A. $953.70.

Q. Will you tell us how much was paid in the year 1948? A. $969 even.

Q. And in the year 1949? A. Twenty-one fifty-two forty.

Q. That last figure for the year 1949 that you gave us $2,152.40? Is that correct? A. Yes.

Q. I see. Thank you.

Mr. Christy: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No.

Q. These were good suits you made, weren't they? A. That is right.

Mr. Fennelly: That is all.

(843) Mr. Christy: Thank you, Mr. Brainson.

The Witness: Is that all? Do I take this back?

Mr. Christy: You may have the original.

The Court: They have photostats.

The Witness: I may take this back?

The Court: Yes, you may take that back.

The Witness: Thank you.

(Witness excused)

Mr. Christy: The Government calls David Schwartz.

DAVID SCHWARTZ, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Schwartz, where do you live? A. 3210 Perry Avenue, Bronx.

Q. Perry Avenue, is that? A. P-e-r-r-y.

Q. Where are you employed, sir? A. Lord & Taylor.

Q. How long have you been with Lord & Taylor? A. 28 years.

Q. Do you have a position at Lord & Taylor? A. Adjustment manager.

Q. As adjustment manager at Lord & Taylor, are you familiar with the books and records of Lord & Taylor?

(844) A. Yes.

David Schwartz—for Government—Direct

Q. Prior to March of 1949 was a ledger sheet kept of each customer's account? A. Yes.

Q. And after 1949 what was the procedure? A. We did away with the ledger sheet and photographed all the customers' bills. We have a microfilm which is a picture of the bill sent to the customer.

Q. And that microfilm is a record kept in the regular course of business? A. Yes.

Q. And it is part of Lord & Taylor's business to keep such record? A. Yes.

Q. And can you make that available to the Court if so desired? A. Yes.

Q. What has happened to the ledger sheets that deal with the accounts prior to 1949? A. They have been thrown out.

Q. They have all been destroyed? A. Yes, sir.

Q. In accordance with the policy of Lord & Taylor? A. Yes.

Q. Mr. Schwartz, did Mrs. Costello open an account at Lord & Taylor? A. Yes.

Q. Was that account subsequently changed to Mr. Costello? A. Yes.

Q. Frank Costello? A. Yes.

Q. To whom were the bills sent? A. Mrs. Costello, Mrs. Frank Costello.

(845) Q. But the account was carried in the name of Frank Costello? A. That is right.

Q. Mr. Schwartz, did Lord & Taylor, at the request of the Treasury Department, prepare a transcript of the account of Frank Costello? A. Yes.

Q. Do you remember when that was? A. We had our ledger sheets at that time; it was a couple of years ago.

Q. About two years ago? A. Yes.

Q. Did you prepare this transcript, or was it prepared under your supervision? A. Under my supervision.

(Marked Government's Exhibit 229 for identification)

Q. I show you Government's Exhibit 229 for identification and I ask you: Is that the transcript that was prepared at the request of the Treasury Department of the account of Frank Costello? A. Yes.

Q. Now, the ledger cards from which that account was prepared had been destroyed? A. Part of them; part of this transcript has been made up from the microfilm, but the part that was—

Q. You testified a few minutes ago that up until March, 1949, there was no microfilming of the records. (846) A. That is right. But this starts with 1945, which would have been part of our ledger sheets.

Q. So that part of the transcript which runs from 1945 through March 1949 was prepared from the original ledger card? A. Yes.

Q. And the balance was prepared from the microfilm? A. Yes.

Q. And there was no microfilming of these records prior to March, 1949? A. No.

Q. Is that an accurate transcript, Mr. Schwartz? A. As far as the figures are concerned, it must be accurate because the machine on which this copy is made is the same machine—

Mr. Fennelly: I move to strike out the "it must be accurate."

The Witness: I beg your pardon?

The Court: Oh, I will allow it.

Q. Will you continue, Mr. Schwartz? A. Did I say something wrong?

The Court: No, it was not wrong. But we have little technical rules here that sometimes we have to live up to; sometimes they are not as important as they seem. But all right, go ahead.

A. The machine on which this bill was made is the same machine that we used at that time in making up our (847) regular bills. That machine acts as an adding machine; the figures you put into it add up automatically, and by pressing a key you get this balance which is on the right-hand side.

The Court: Well, at the time the transcript was made up was it checked against the original documents from which it was copied?

The Witness: Yes.

The Court: And was the accuracy of the transcript verified?

The Witness: Yes.

The Court: At that time?

The Witness: Yes.

The Court: Very well. Has what you have before you been changed in any way since the time it was first made up?

The Witness: Not that I know of.

The Court: Very well. All right.

Q. This part of the transcript covering the years 1945 through March, 1949, you say was prepared from the ledger cards? A. Yes.

Q. And the ledger cards are records kept in the regular course of business? A. Yes.

Q. And it was the regular course of business to keep such ledger cards? A. Yes.

(848) Mr. Christy: Your Honor, I offer Government's Exhibit 229 for identification in evidence. And may we cross out that which does not apply to the years 1945 through 1949?

The Court: Blocked out.

Mr. Christy: Blocked out.

Mr. Fennelly: May I examine the witness preliminarily, your Honor?

The Court: You may.

Preliminary Cross Examination by Mr. Fennelly:

Q. Did I understand you to testify that the original account was in the name of Mrs. Costello? A. Mrs.—may I refer to some records here?

The Court: Yes.

A. The account is in the name of Frank Costello; a verification of the opening of the account was sent to Mr. Costello, but the bills sent out went out in the name of Mrs. Costello.

Q. Wasn't the account originally in the name of Mrs. Costello? A. No.

Q. Have you any records showing the opening of the account? A. Yes.

Q. You are handing me some records showing the opening of the account. A. These are the records of (849) the opening—the application and the opening of the account.

Mr. Fennelly: Mark this, will you?

The Clerk: As one exhibit, Mr. Fennelly?

Mr. Fennelly: Yes.

(Marked Defendant's Exhibit GG for identification.)

Q. Now, on the first slip which is dated January 10, 1945, under the line "Signature"—on the line "Signature" is "Mrs. Loretta Costello"; isn't that right? A. That is right.

Q. And opposite "name" up above is written in ink—

Mr. Christy: Your Honor, I don't believe this exhibit has been offered in evidence yet.

The Court: No, it has not.

Mr. Fennelly: I will offer it.

The Court: If you do and it is admitted, you may read it.

Are you offering all of the exhibit, Mr. Fennelly, or just that one sheet at this time?

Mr. Fennelly: I am offering only one sheet.

The Court: That one sheet that you discussed—

Mr. Fennelly: The first sheet that I have shown to the witness.

The Court: Very well.

Mr. Christy: No objection to Defendant's Exhibit (850) GG for identification.

The Court: Well, that is only part of GG. That will be marked GG-1.

The Clerk: The first sheet marked GG-1 for identification, is that correct?

The Court: No. In evidence.

The Clerk: Oh, I see.

The Court: It was offered without objection.

(Defendant's Exhibit GG-1 received in evidence.)

The Court: May I see it a minute?

Very well.

Mr. Fennelly: (To the jury) This is: Lord & Taylor charge account office, January 10, 1945. In

ink is written on here Mrs. Loretta B. Costello, (Mrs. Frank). A pencil mark has now been drawn through that and above it it says "Mr. Frank Costello." The signature is Loretta B. Costello and the bank reference is Corn Exchange Bank.

Q. Now, when that account was opened by Mrs. Costello, Lord & Taylor checked Mrs. Costello—

Mr. Christy: Your Honor—

Q. Checked Mrs. Costello—

Mr. Christy: I object. This is not proper preliminary cross examination.

The Court: I think it is. You have offered 229 (851) as an account of Mr. Costello, and the purpose of this examination is to show, I suppose, that Mr. Fennelly wants to show that it is not properly chargeable and he can lay the basis for an objection on the ground of relevance, or, really, lack of relevance.

I will allow it.

Q. Now, when the account was opened by Mrs. Costello, Lord & Taylor made a credit check of Mrs. Costello, did they not? A. Yes.

Q. And I show you—

Mr. Fennelly: Perhaps you had better mark this first, just that top sheet.

The Clerk: Shall I give this—

The Court: That will be marked GG-2.

(Marked Defendant's Exhibit GG-2 for identification.)

Q. And isn't Exhibit GG-2, and I refer to the first sheet only, isn't that a credit inquiry that Lord & Taylor made as to the credit of Mrs. Loretta Costello? A. Yes.

Mr. Fennelly: I offer it in evidence.

Mr. Christy: No objection, Mr. Fennelly.

Mr. Fennelly: I am offering only the one sheet.

(Marked Defendant's Exhibit GG-2 in evidence.)

(852) Mr. Fennelly: This is on the letterhead of Lord & Taylor, which they have sent out to the Corn Exchange Bank, stamped on the top, "Please answer here, Corn Exchange Bank."

"Gentlemen: In connection with your inquiry regarding Mrs. Loretta B. Costello (Frank) 115 Central Park West, please be advised that at our Hudson Street Branch we have a personal account in the name of Loretta B. Costello. This account opened at September, 1937, and previous to that time was maintained at one of our other branches.

"High four-figure balances are usually maintained, and it has always been properly conducted with no borrowing involved.

"The above-captioned residence address agrees with our file. We have no further knowledge of the object's financial responsibility but trust the above proves of some assistance.

"Very truly, Horace Bromfield,"

it looks like, "Assistant Vice-President."

And that came from the Corn Exchange Bank to Lord & Taylor, did it not?

A. Yes.

Q. Did you draw the pencil line through the name "Mrs.

Loretta Costello" on Defendant's Exhibit GG-1? (853) A. No, I did not.

Q. And did you write above that "Mr. Frank Costello"? A. I did not.

Q. Did you see it written on there? Did you see who wrote "Mr. Frank Costello"? A. No, I did not.

Q. Did you see who drew the pencil line through "Mrs. Loretta B. Costello"? A. I did not.

Mr. Fennelly: I object to it, your Honor, on the ground that it is irrevelant and immaterial and not a true transcript of the record.

The Court: You are objecting, I take it, to 229?

Mr. Fennelly: I am objecting to Exhibit 229 for identification, that it is not a true transcript of the original record.

The Court: At the time this transcript was made, I think you told us a few moments ago that it was compared with the original records then in existence?

The Witness: Yes.

The Court: Did that comparison include the name of the account as it appears here?

The Witness: Yes.

The Court: And that was the name of the account from which this transcript was made?

The Witness: Yes.

(854) The Court: Very well. Overruled.

Mr. Fennelly: May I ask one more question, your Honor?

The Court: Yes.

Q. Did you, sir, compare this Exhibit 229 with the original card? A. Is that this itemized bill? I don't know them by number.

Q. Did you compare Exhibit 229, which is your— A. Yes.

Q. —transcript? A. Yes.

Q. Did you compare it with the original card? A. Yes.

Q. Did the original card have "Mrs. Loretta Costello" on it? A. The card, the ledger card, just read "Frank Costello," although the credit office records indicate it is Mrs., the bills to go to Mrs. Frank Costello.

I could explain that. It would take a little time. This statement that is entered in the—at the time these bills were mailed out, the customer's name and address was put on this ledger—customer's statement and mailed out—is done from a stencil, addressograph stencil, and that read "Mrs. Frank Costello." So that bills going out read "Mrs. Frank Costello" although the ledger card didn't have Mrs. on it.

Q. Was that through an error of Lord & Taylor's, (855) that you put "Mrs." on that? A. No.

Q. Ledger account? A. The biller in typing up the ledger sheet just wrote "Frank Costello" instead of "Mrs."

Mr. Fennelly: Same objection, your Honor.

The Court: Overruled.

(Marked Government's Exhibit 229 in evidence.)

Direct Examination by Mr. Christy: (Continued)

Q. Mr. Schwartz, as far as the records of Lord & Taylor are concerned, this account is in the name of Frank Costello, is that correct? A. Yes.

Q. Mr. Schwartz, from this transcript, Government's Exhibit 229 in evidence, have you prepared a computation of the total amounts paid in each of the years 1945 through 1949? A. Yes.

Q. Sir, will you tell us how much was paid in the year 1945? A. $554.50.

Q. 1946? A. $539.12.

Q. 1947? A. $903.19.

Q. 1948? A. $2.04.

Q. 1949? A. $281.17.

Q. The part of that transcript covering the period from March, 1949, through the end of the year was prepared from the microfilm, is that correct? (856) A. Yes.

Q. Have you checked that transcript for that period against the microfilm? A. Yes.

Q. And it is in all respects accurate, is it? A. Yes.

Cross Examination by Mr. Fennelly:

Q. Sir, you did not appear before—

Mr. Christy: Just a minute.

By Mr. Christy:

Q. I show you Defendant's Exhibit GG-1 in evidence and I ask you if this has ever been in the Government's possession? A. No, it hasn't.

Q. And this pencil notation "Mr. Frank Costello," written in over "Mrs. Loretta Costello," which has been crossed out, was put on there sometime subsequent to 1945? A. If I may see those papers I can tell you when it was put there.

Q. (Handing papers to the witness). A. That was changed subsequent to January 22, 1945, when this letter was mailed out.

Q. It hasn't been put on there recently? A. No.

Mr. Christy: No further questions.

David Schwartz—for Government—Cross

Cross Examination by Mr. Fennelly:

(857) Q. Did you appear before the Grand Jury, and testify, that returned the indictment in this case? A. No, sir.

Q. Has Lord & Taylor any letter from Mr. Frank Costello telling them to put any account in his name with you? A. Not that I know of.

Q. You do send the bills to Mrs. Costello, do you not? A. Yes.

Q. May we go through some of the items here on Exhibit 229, which is this bill? Start—

The Court: We had better wait and do that after lunch because it might take a little time.

All right, ladies and gentlemen, we will take our recess, and remember the instructions I have been giving you: Don't talk about the case and keep your minds open until all the evidence is in.

Two-fifteen.

(Recess until 2.15 p.m.)

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(858) AFTERNOON SESSION

DAVID SCHWARTZ resumed.

Cross Examination by Mr. Fennelly: (Continued)

Q. Now, on this account, Lord & Taylor, Exhibit 229, Government Exhibit, the first item on here is a dress, is that right? A. Yes.

Q. 1945. And the next one, next two items are also dresses? A. Alterations on the dress.

Q. Oh, yes. And then, after that, are two more dresses? A. The dress and alteration, another dress, and tax, and alteration.

Q. And then two draperies? A. That is right.

Q. Dresses? A. Yes.

Q. Aprons? A. Yes.

Q. An apron set? A. Yes.

Q. A uniform? A dress? Right? A. That is right.

Q. A coat and a bonnet? A. Yes.

Q. Shoes? A. Yes.

Q. Towels and cloth? A. Yes.

Q. Dress? A. Yes.

Q. A shade? A. Yes.

Q. A jacket and a PP, what is that? A. Parcel post; that was sent out of town.

Q. Shade fixtures? A. Yes.

(859) Q. Draperies? A. Yes.

Q. What is this word? S-h-r-e-a-p, what does that mean? A. I don't know.

Q. Slip covers? A. Yes.

Q. A rug? A. Yes.

Q. Fabric? A. Yes.

Q. Two hose? A. Yes.

Q. Two cosmetic kits? A. Yes.

Q. More cosmetics? A. Yes.

Q. Utility bag? A. Yes.

Q. Soap sachet cream? A. Yes.

Q. A dress? A. Yes.

Q. Fabric? A. Yes.

Q. And the next one is a piece of furniture, is it? A. Breakfront.

Q. An ash tray? A. Yes.

Q. Lamp and shade? A. Yes.

Q. Towels? A. Yes.

Q. A Faberge set, what is that? A. Perfume set.

Q. More soap? A. Yes.
Q. Pillows? A. Yes.
Q. Table? A. Yes.
Q. Shades? A. Yes.
Q. Tables? A. Yes.
Q. A doll? A. Yes.
(860) Q. Teddy and Me, what is that? A. Toy.
Q. A toy. A doll? A. Yes.
Q. Blocks? A. Yes.
Q. A doll? A. Yes.
Q. And another doll? A. Yes.

Mr. Fennelly: Could I have Mrs. Costello's account, please, with the Corn Exchange Bank? That is 43, I believe.

And has the Government got checks of Mrs. Costello paying the Lord & Taylor account?

Q. Now, would you pick out an item on this account, No. 229, of when Lord & Taylor received a payment? A. April 16—

Q. Well, let us take 1949. Does that go to 1949? A. Yes.

Q. Now, pick out an amount, and give me the date and the amount, would you, of a payment? A. The first payment here is $10.10 in July '49.

Q. July '49? A. It is listed on our account as the 19th. It could have come in within ten days prior to that.

Q. How much did you say, sir? A. $10.10.

Q. July when? A. Around the 19th, prior to the 19th.

Q. Yes. Now, I refer you to Government's Exhibit (861) 43 which is Mrs. Costello's account at the Corn Exchange Bank and point out to you on July 21 a withdrawal of $10.10? A. Yes.

Q. The same amount, isn't it? A. Yes.

Q. Now, what is the next payment?

Mr. Christy: What year is that, your Honor?
Mr. Delaney: '49.
Mr. Fennelly: '49.
The Court: '49.

A. September 1949. $122.15.

Q. September what date, sir? A. Prior to the 7th of September. It might have been the latter part of August.
Q. $115? A. $122.15.
Q. I call your attention to Exhibit 43, Mrs. Costello's ledger account under date of September 9th? Is there a withdrawal of $122.15? A. Yes.
Q. And the only record is Lord & Taylor of opening the account is that authorization from Mrs. Costello to open that account, isn't it? A. Yes.
Q. Let us take some item of payment, say, during the year 1947 and pick out one and give me the date of it? A. In January of 1947, $60.87.
Q. What is the date, January what? A. I have it as January 9. It is possible that (862) it came in prior to January 9—in fact, it did.
Q. How much is it? A. $60.87. Want to go on with the next month? That could have been December of the year before.
Q. What is the next one you have? A. February of 1947.
Q. Excuse me, before—I see another— A. That was $60.87.
Q. What is the next item? A. February of 1947, $134.64.
Q. I show you Government's Exhibit 43, the account of Mrs. Loretta Costello with the Corn Exchange Bank, and ask you whether there isn't on February 14 a check drawn for $134.64? A. Yes.

William N. Murphey—for Government—Recalled—Cross

Mr. MacMahon: May we have the year?
The Court: '47.
Mr. Fennelly: 1947.

Q. Now, would you take some one in 1946? A. April. Probably be on that listing in March. $279.01.

Q. I call your attention to Mrs. Costello's account, the Corn Exchange Bank, April 16, withdrawal of $279.01. A. Yes.

Q. Correct? A. Yes.

Q. Same amount? A. (No answer.)

(863) Mr. Fennelly: That is all.
Mr. Christy: No further questions.
The Court: Very well. Thank you.
Mr. Christy: Thank you very much, Mr. Schwartz.

(Witness excused.)

Mr. Seymour: Your Honor, this morning Mr. Fennelly indicated that he would like to have William N. Murphey recalled. I believe he is in the witness room at this time and he is available for that recalling.

The Court: Do you prefer to take that now?
Mr. Fennelly: Yes, your Honor.
The Court: Very well.

WILLIAM N. MURPHEY recalled.

Further Cross Examination by Mr. Fennelly:

Mr. Fennelly: Could I have Exhibits 20, 21, 24 and 212?

William N. Murphey—for Government—Recalled—Cross

(Exhibits handed to Mr. Fennelly.)

The Court: What were the exhibits you asked for besides 212?

Mr. Fennelly: 21, 24.

The Court: Fine.

Mr. Fennelly: And 20.

The Court: 20, 21 and 24.

(864) *By Mr. Fennelly:*

Q. Mr. Murphey, when you testified on your direct examination as to preparing the schedule, Exhibit 24, you testified, did you not, that you took that information off your assessment list, Exhibit 20? A. That is right, sir, payments—record of payments.

Mr. MacMahon: That wasn't the testimony, as I recall it.

The Court: The witness just said it was.

Mr. Fennelly: The witness said it was.

Mr. MacMahon: The record, your Honor, shows that he has testified it came from the withholding statements, from the tax returns and from the assessment.

Q. As to the element of withholding tax, you have already testified that that information did not come from your assessment list, Exhibit 20, for identification but that you took the withholding information from income tax records in evidence? A. From the income tax returns as filed by the taxpayer, the withholding.

Q. The income tax returns in evidence, did you not? A. That is right.

Q. That is what you testified to on your direct (865) examination, is it not? A. Right.

Q. And the Exhibit 24 that you prepared from your assessment list, Exhibit 20 for identification, was a correct and true and accurate transcript, was it not? A. To the best of my ability it was, sir, yes.

Q. And it correctly recorded the tax paid and the accounts upon which it was paid according to your assessment list, Exhibit 20? A. Yes, with the exception—

Mr. Seymour: If your Honor please—excuse me.

The Court: Do you want to object?

Mr. Seymour: I thought he probably answered it.

The Court: No, he didn't. He just got one word out. It wasn't responsive.

Mr. Seymour: Your Honor, I submit that yesterday, at some length, Mr. Murphey explained that in preparing 212 and also—

The Court: If you are going to argue, Mr. Seymour—

Mr. Seymour: Yes.

The Court: —this is not the time. If you want to object, I will hear the objection and rule on it.

Mr. Seymour: I object, your Honor, that this line of examination is repetitious of the testimony given (866) by the witness yesterday.

The Court: It may turn out to. As of now, it doesn't seem to me to be so. I will overrule the objection.

Mr. Fennelly: Would you repeat the question?

(To the witness) Listen to the question carefully.

(Question read as follows:

"Q. And it correctly recorded the tax paid and the accounts upon which it was paid according to your assessment list, Exhibit 20?")

Mr. MacMahon: That is no question. Read the full question.

(Record read as follows:

"Q. And the Exhibit 24 that you prepared from your assessment list, Exhibit 20 for identification, was a correct and true and accurate transcript, was it not? A. To the best of my ability it was, sir, yes.

"Q. And it correctly recorded the tax paid and the accounts upon which it was paid according to your assessment list, Exhibit 20?")

A. Yes, sir, it did, to the best of my ability. Statement was correct; the schedule is correct, and I took it from the assessment list with the exceptions we (867) noted yesterday when I testified that there are certain errors.

Q. Errors in what, Mr. Murphey, in your assessment list? A. No, sir.

Q. There were no errors in the assessment list? A. The errors that I called to the attention of the Court yesterday were errors where, in particular, Loretta Costello's return as filed under her name was a joint return, and I have changed my records accordingly.

Q. What I want to know is, was there any error—is there any error on your assessment list, Exhibit 20 for identification? Yes or no. A. In regards to the payments, no.

Q. Is there any error on your assessment list in regard to the amount of the assessment and the person against whom the assessment was made? A. From the—

Q. Yes or no.

The Witness: Would you read the question? May I have it repeated?

(Question read.)

Mr. Seymour: If your Honor please, I object unless the question is made specific as to the particular years, or specifically stated to apply to all the years.

The Court: Overruled.

(868) A. The tax as assessed is correct, sir, and the accounts as set up from the tax return were correct with the exceptions I called to the Court's attention yesterday.

Q. What I want to know is, and would you please answer the question yes or no, is the assessment list which you have produced, Exhibit 20 for identification, correct as to the name of the person against whom the assessment was made and the amount of the assessment? Yes or no? A. Yes, sir.

Q. It is correct? A. Yes.

Q. And the schedule that you prepared, Exhibit 24, is a correct transcript of that assessment list, isn't it? A. Of the payments shown thereon, yes.

Q. And the person against whom the assessment was made? A. Yes, sir, with the exceptions, again, of the errors I noted.

Q. What I am trying to find out, and I think you have told us that you say that your assessment list, Exhibit 20, is correct and you say you made a correct transcript of that on Exhibit 24, isn't that right? A. That is right, sir.

Q. Let us come then to schedule 212, that you prepared yesterday, where you have something different in it than you had in Exhibit 24. Tell me what the (869) first item of change was?

Mr. MacMahon: Your Honor, I submit this is repetitious. It was all gone over yesterday.

Mr. Fennelly: I propose to show—.

Mr. MacMahon: If he wants to badger Mr.—

The Court: Overruled.

Mr. MacMahon: —Murphey—

The Court: Oh!

Mr. Fennelly: I am not badgering Mr. Murphey. I am showing that a schedule prepared isn't so.

The Court: I have overruled the objection, Mr. Fennelly. Let us not have any argument. Let us have some examination.

A. I will try to recall, to the best of my ability, Mr. Fennelly.

May I see the items? I think I can tell better by looking at the schedule.

The first change was for the year 1929, and an item of $42.55, which had been under the name of Frank Costello. However, the return for 1929 showed a joint return, and I have made my change to show the credit to the joint account.

Q. Please refer to your assessment— A. May I have my work papers?

Q. —list?

(870) The Court: You may.

Q. Please refer to your assessment list and show me where the item is on your assessment list? A. Item of $42.55 has been set up on a penalty and interest account, which is a term we use in the office for additional assessment and interest. It is under the name of F. Costello.

Q. All right. And will you show me where that item appears on Exhibit 24? A. Yes.

Q. Which was the first schedule that you prepared? A. Right here, sir.

Q. That is under the name of Frank Costello, as shown on your assessment list? A. On Exhibit 24.

Q. Is that right? A. Right.

Q. What is the next item? A. The next item, if I can recall, was for the year 1926, $155.65, and that was credited—

Q. Wait. I may be able to help you. A. I think—I am sure that was the second one, sir. That was under the name of Frank Costello also but the original—

The Court: Under the name of Frank Costello where?

The Witness: On the assessment sheet and on the earlier exhibit, sir.

(871) Q. Will you please look—

The Court: By "the earlier exhibit" let the record show the witness is referring to Exhibit 24.

Q. Will you please look on your assessment list, Exhibit 20, and show me where the item is. Is that $155? A. $155—

Q. I believe you— A. 65 cents.

Q. —you testified yesterday, October 4, 1938? A. Yes, sir. It is under the name of F. Costello, 241 Central Park West, penalty and interest account.

The Court: Where?

The Witness: On the assessment sheet, for identification No. 20. It appeared under the name of F. Costello as additional interest on the 1926 account, which was a joint return, and which I have since changed to joint.

Mr. Fennelly: I move to strike out what he has changed.

Q. Your assessment list—

The Court: The motion is denied because that, as I recall it, is substantially what he testified to yesterday.

Q. Your assessment list was an assessment against Mr. Costello, was it not? A. Assessment against Mr. Costello.

(872) Q. And your account shows a payment of that amount on Mr. Costello's account on your assessment list, doesn't it? A. Yes, sir.

Q. And that is what you have on Exhibit 24? A. Yes, sir.

Q. Which is your transcript of it, is that correct? A. That is right, sir.

Q. And, now, let us take the next item, which I think is under date of November 22, 1943, Mr. Murphey. A. All right. What was the amount, sir, it is?

Q. Two items, one of $250.77 and another for $749.23. A. $250.77 is on an account under the name of Loretta B. Costello, additional interest for the year 1931.

Q. And what you have read appears on your assessment list Exhibit 20 for identification, is that right? A. That is right.

Q. Now, on Exhibit 24 you have that entry from your assessment list— A. Under the name of Loretta Costello.

Q. That is right. And that correctly reflects your assessment list? A. That is right.

Q. Now, there is another item I believe on the same date in the amount of $749.23? A. Yes, sir.

Q. And would you tell us how that is recorded on (873) your assessment list, Exhibit 20 for identification? A. It is under the name of Loretta B. Costello for the year 1931.

Q. Would you look at your schedule, Exhibit 24, and tell me whether you didn't so correctly transcribe that from your assessment list Exhibit 20? A. It is under the name Loretta Costello on schedule 24.

Q. Now, then, would you look on an entry I believe of—

The Court: What page of the transcript are you on, may I ask?

Mr. Fennelly: Yes, your Honor, 753.

Q. On January 6, 1944, I believe, is there any credit there in the amount of $426.36? A. That is an interest item, sir. It is on another account which I will get for you in a minute. That is the item, sir, that I called to the Court's attention yesterday was a notation on the account.

Q. Would you just find it, please, on the Exhibit 20, your assessment sheet? A. For the year 1932, under Loretta B. Costello, there is a notation referring to the interest account, and the account number is given. February 5th, 30088 listed in 1944 in the amount of $426.36.

(874) Q. Am I correct in understanding that yesterday that you said that that was an omission from schedule 24? A. That is right, sir.

Q. And it appears on your assessment— A. On the assessment sheets.

Q. —sheet for Loretta— A. And I didn't—

Q. —Loretta B. Costello? A. And I missed it when I was making up my schedule, that's right.

The Court: When you say "my schedule" you mean Exhibit 24?

The Witness: 24.

The Court: Mr. Fennelly, do you mind if I interrupt you for just a minute?

It seems to me up to now all that you have done is to have the witness repeat in substance what he testified to yesterday. Now, is this preliminary to something else that you intend to develop?

Mr. Fennelly: No.

The Court: Or are you merely having him repeat what he has already told us?

Mr. Fennelly: No, he has changed—he has prepared a schedule which does not reflect his assessment sheet.

The Court: Well, he has prepared a schedule—he has prepared two schedules, as a matter of fact; one (875) of them is 24 in evidence and the last one was introduced yesterday and was received as Exhibit 212. At the time that exhibit was put in Mr. Seymour had the witness testify as to certain modifications in 212 which differentiated it from 24. Now, as I understood, the purpose of this cross examination was on the basis of that to develop something else. But it seems to me that all you have done now is have him repeat exactly what he told us yesterday.

Mr. Fennelly: No.

The Court: If that is all you intend to do, I don't think we can afford the time.

Mr. Fennelly: No, your Honor. What I propose to do is to move to strike out this Exhibit 212 because it is not based on the assessment list and is altered by the testimony of the witness and not by the records of the Department.

Mr. Seymour: If your Honor please, to save—

The Court: Let's wait.

How many more of these do you intend to go through?

Mr. Fennelly: There are, I think, only about four more items.

The Court: You may do it. You may lay whatever foundation you think necessary for whatever motion (876) you desire to make. But I wonder if it is necessary to take the time to have the witness repeat precisely what he told us yesterday, since

it is already in the record, and if that is all you want you may make your motion on that basis as well as having him say it all over again.

Mr. Fennelly: Your Honor, the point is that I must develop through the witness that the schedule 212 does not reflect what the assessment list reflects.

The Court: That may be so. But is it not the fact that his testimony yesterday gives the basis for you to make that argument? That is my point.

Mr. Fennelly: I want to demonstrate to your Honor that—

The Court: Oh, now, please, if we have it in writing we don't need it in pictures. Come on, let us move along.

Mr. Fennelly: There are, I think, only three—

The Court: Well, I wish you would answer the question which I asked. If all you are going to do is have him repeat what he told us yesterday I don't want to take the time to do that, because you have got the record on that and you can make whatever argument you think the record will support.

Mr. Fennelly: All I want to show, your Honor, (877) on this cross examination is that the schedule that he has prepared, 212, does not reflect what appears on the Exhibit 20 for identification, which is the assessment list of the Internal Revenue Bureau showing the person against whom the assessment was made and the account to which the Revenue Bureau credited the payments.

Mr. Seymour: If your Honor please, to save time—

Mr. Fennelly: The schedule—

The Court: Just a minute.

Mr. Fennelly: The schedule, 212, distorts the as-

sessment list. And that is the purpose of the cross examination.

The Court: Well, you mean that it shows something different.

Mr. Fennelly: That is right. Not different—

The Court: "Distortion" is a rather harsh word, but it has overtones and undertones which I don't—

Mr. Fennelly: It is not based on the fact, your Honor.

The Court: That may be so. But that you may argue. And on the basis of that you are claiming that the record—or that now you move to strike 212.

Mr. Fennelly: That is right.

The Court: Very well. Now, I will hear you.

Mr. Seymour: I was going to offer, your Honor, (878) to save time, to make whatever concession Mr. Fennelly needed to lay his foundation with respect to what the witness said here.

The Court: He has all the foundation in there now that he needs. As a matter of fact, he has made his motion.

Mr. Seymour: Your Honor, in the first place I submit that schedule 212 is supposed to be a schedule reflecting all of the tax payments properly broken down as to interest and properly credited to the appropriate accounts. At Mr. Fennelly's request, this witness searched back through the files in his office to determine what returns had been filed prior to 1937, and it was, indeed, as a result of that search, I understand, that he discovered, for example, that the 1929 return, the 1926 return, and so on, were in fact joint returns. He had been instructed by your Honor to prepare a schedule properly reflecting the account. In fact, his assessment list showed the account under the name of one of the individuals;

but he determined that, in fact, the account was a joint one because the return on which the tax was paid was a joint return.

Therefore, we submit, quite properly, he made that correction, called it to the Court's attention upon the offer, or prior to the offer of the exhibit yesterday, (879) so that Mr. Fennelly would be fully apprised of those corrections and the bases for them.

We submit that, far from being a ground to strike this schedule, the fact that the witness has gone to such pains to insure its accuracy, notwithstanding errors which might appear as to the names listed on the assessment list, speaks very much in favor of it staying in evidence without any further question.

Mr. Fennelly: If your Honor please, what I had asked this witness to do, as far as this assessment list was concerned, was to break down merely the amount of interest per year so he would have a list of it, because it is difficult—the schedule that was submitted did not show a breakdown of interest.

The Court: You mean 24?

Mr. Fennelly: That is right. Now, he has done something far beyond that and has not made his schedule based on the assessment list in their own office, but has drawn a conclusion, which he is not entitled to draw because it is not what is in the record of his office. And that is my point. And I will show you exactly, if you will let me have the exhibits you were offering yesterday—212, is it, for identification? I will show your Honor—

(880) The Court: 212 is this (indicating), isn't it?

The Witness: This is 212, sir.

Mr. Fennelly: No, not 212.

William N. Murphey—for Government—Recalled—Cross

The Court: That 218, 219 and 220 that we ruled on this morning?

Mr. Fennelly: Yes, your Honor.

The Court: Do you want them in?

Mr. Fennelly: 220 for identification. No, your Honor, I just want to demonstrate to you what I am—

Mr. Delaney: 214.

Mr. Fennelly: If you will, your Honor, just look at paragraph 5 of 220 for identification (handing).

Mr. Seymour: I would like to be heard on this, your Honor, when you have read it.

The Court: I think I will excuse the jury while we get into this discussion because it involves some matters which were offered and excluded. So you might take a recess now.

(Jury retired and the following proceedings were held in their absence.)

The Court: Looking at that doesn't clarify the picture.

Mr. Fennelly: Your Honor, simply this: When the Internal Revenue Bureau has made an assessment, as they did in the instance referred to, in 1931 and 1932, (881) they made it against Mrs. Loretta Costello, and that was the return that went in evidence which was signed by her.

Now, it appears that she put a note on it that it was a joint return. When the Government made an assessment they assessed not Mr. Costello but Loretta Costello, and that is what appears on the assessment sheet. And that is what Exhibit 24 reflects—a transcript of what is on the assessment sheet, Exhibit 20.

Now, they come along, not based on records, and say that the payment that appears credited on the assessment sheet against Loretta Costello's assessment, they say it is a joint return and they are now concocting Exhibit 212 which is not in accordance with the facts, because the Government assessed Loretta Costello, not Mr. Costello, and their schedule is not in accordance with the Government's record.

The Court: Doesn't the record, doesn't the tax return, whatever the number of it is I don't know, but it was Mrs. Costello's, and it went into evidence yesterday—

Mr. Seymour: Yes, sir.

Mr. Fennelly: That is right.

Mr. Seymour: It was an exhibit of the defendant.

(882) The Court: Yes, their EE or FF. And that shows, not just some little note stuck off some place as you describe it, but it is a statement by the person who signed that that she is making a joint return.

Mr. Fennelly: The point is that the Government made an assessment; they assessed Loretta Costello—

The Court: That is right.

Mr. Fennelly: —not Mr. Costello.

The Court: Now, that might, if the precise amount was important here it might have some relevance, but what has happened here is that with all the basic documents before the Court and before the jury, in the record, this man has now prepared a schedule which purports to be no more than he says it is, and he has now taken figures which in one document, 20 for identification, which is not in evidence incidentally, appeared in one form, he says belongs in another form, explains what he does and puts it in there.

Mr. Fennelly: But, your Honor, it is on no form of the Government whatsoever. What he is doing, don't you see, is preparing a schedule, and he is drawing an inference and saying it should be credited on the joint account. My point is that the assessment was made against Loretta Costello solely.

The Court: That is right. And the record of (883) this trial so states.

Mr. Fennelly: Therefore his schedule—

The Court: And he says that was undoubtedly an error because the return was a joint return.

Mr. Fennelly: No, I am sorry, your Honor. There is no error. The Government's own list—

The Court: Yes, but he says—

Mr. Fennelly: And the Government—

The Court: What I understand you in effect to be saying is that the Government made a mistake in assessing it against Mrs. Costello, that it should have been assessed against both of them; isn't that what you are saying?

The Witness: That is right, sir.

Mr. Fennelly: No. They may assess it against one. They don't have to assess both. Loretta Costello was the one who filed the return and they can make the assessment against her. And that is what they did.

The Court: You might be right about that.

Mr. Fennelly: That is what they did. Now, what they are trying to do is to change it around, and it is not in accordance with the facts of what happened.

The Court: What is the effect when it was changed?

(884) Mr. Fennelly: When they brought the suit they didn't sue Frank Costello on those returns.

The Court: Yes, but what is the effect of the change?

Mr. Fennelly: The schedules are incorrect and they are not based on—

The Court: They are incorrect to that extent.

Mr. Fennelly: That is correct.

The Court: Now, assume they are—

Mr. Fennelly: That is why I want the facts in evidence in accordance with the truth, the truth from the Internal Revenue Bureau's own records.

The Court: Now, you have it both ways. One time it was this way and another time it was that way, and from that you can make whatever argument you wish.

But as to the motion to strike the Exhibit 212 I will deny it.

Now, I suppose we might all as well take a recess.

Mr. Seymour: I assume we are going to excuse this witness, is that correct?

Mr. Fennelly: Yes, that is all.

Mr. Seymour: May I suggest at this time, your Honor—

The Court: Well, you had better not do anything (885) more now. We just recessed the jury, and this is a criminal trial and anything that is going to be done, outside of this argument which I did, for the protection of the defendant, hold outside the jury, I think we had better hold up until the jury comes back.

Mr. Seymour: Very good.

Mr. MacMahon: And the witness is excused?

The Court: You had better excuse the witness when the jury comes back.

(Short recess.)

(Jurors in box.)

WILLIAM N. MURPHEY resumed.

Mr. Seymour: If your Honor please, at this time the Government respectfully offers in evidence Government's Exhibit 20 for identification.

Mr. Fennelly: I have no objection to it, your Honor, providing some of the notations on there, which I will be glad to show you, are blocked out of it.

The Court: Suppose you both step up here.

(Conference at the bench between Court and counsel off the record.)

The Court: Government's Exhibit 20 is now received in evidence and under this stipulation: There are certain penciled and other notations on there which the Government does not include in its offer, and counsel (886) for the Government and for the defendant will check and agree on what has to be stricken out, and as stricken the exhibit is received, I mean with those eliminations the exhibit is received in evidence. That is the assessment sheet you are talking about.

Mr. MacMahon: Yes, your Honor.

Mr. Seymour: I have no further questions.

The Court: No further questions of Mr. Murphey? All right, Mr. Murphey, you are excused.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Seymour: The Government calls John A. Riker.

John A. Riker—for Government—Direct

JOHN A. RIKER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Riker, where do you live? A. 489 Fort Lee Road, Leonia, New Jersey.

Q. Were you ever employed by the Phono Films Distributing Company, Inc.? A. Yes, I was.

Q. Can you tell us when you were employed by that company? A. I was employed since its inception in December 1940 until its merger with Films, Incorporated (887) in August 1943.

Q. What was your position with the company, Mr. Riker? A. I was treasurer.

Q. Throughout that period? A. Yes, sir.

Q. Can you tell us, Mr. Riker, whether the defendant Frank Costello had an interest in that corporation? A. Yes, he did.

Q. Can you tell us, please, the nature of the business of Phono Films Distributing Company? A. Phono Films Distributing Company was engaged in the manufacture of coin-operated machines, known as juke boxes, also the production of sound machine picture film which was to be used in the projector in these machines.

However, at the outset of World War II materials were frozen and the manufacture of the machines was discontinued.

(888) Q. Did the company ever distribute these products? A. No, they didn't.

Q. Just to make sure we understand you, Mr. Riker, you say that the product that the corporation was to handle was a combination juke box and projector? A. And projector, yes, with a screen in the box so that the picture would show in the machine at the time the programs were played through the projector.

Q. By programs you mean music? A. Music, yes, that is correct.

Q. Can you tell us, Mr. Riker, whether your corporation ever received any payment from Frank Costello for his interest in the corporation? A. No, they did not.

Q. Would you tell us then, sir, the circumstances under which he came to have an interest in the corporation? A. Under a certain basic agreement—

Mr. Fennelly: I object to it as immaterial unless there is a money interest.

The Court: Do you intend to show—you have a statement now that he put no money in it—do you intend to show that he got any money from it?

Mr. Seymour: Yes, your Honor.

The Court: Very well, go ahead.

A. (Continuing) Under a certain basic agreement (889) with one Frank Orsatti of Phonofilms Distributing Company, Mr. Orsatti sold his entire business in the company which he owned, named Phonovision Corporation of America, in exchange for which Mr. Orsatti received preferred and common stock in Phonofilms Distributing Company, and at the time of the issuance of the shares of stock, Mr. Orsatti's interest, we received instructions from Mr. Orsatti to issue 200 shares of common stock of Phonofilms Distributing Company to Frank Costello.

Q. Mr. Riker, have you brought with you today books of the Phonofilms Distributing Company, Inc. relating to that stock interest of Frank Costello's? A. Yes, I have.

Q. May I have them, sir? A. (Handing books to Mr. Seymour).

Mr. Seymour: Will you mark this page, please, temporarily?

(Marked Government's Exhibit 230 for identification.)

Mr. Seymour: Would you mark this 231, please, and again temporarily?

(Marked Government's Exhibit 231 for identification.)

Q. Mr. Riker, looking at Government's Exhibit 230 for identification, can you tell us the date on which (890) the stock interest of Frank Costello was issued to him. A. January 29, 1942.

Q. Can you tell us, sir, is Government's Exhibit 230 that certificate? A. Yes, it is.

Q. Isn't it in fact a replacement certificate? A. Yes, it is a replacement certificate of one which had been—

Mr. Fennelly: I object, your Honor, to describing the books. They aren't in evidence.

Mr. Seymour: If your Honor please, I believe this is identification of the exhibit. I intend to offer—

The Court: You may proceed. Overruled.

A. (Continuing) This certificate is a replacement of a certificate previously issued and lost. The new certificate is dated August 12, 1943.

Q. For purposes of identification, Mr. Riker, can you tell us, does that—

The Court: Just a minute. Read that answer.

(Record read)

Mr. Seymour: I withdraw the question.

Q. Can you tell us, Mr. Riker, when Costello disposed of his stock interest in Phonofilms Distributing Company, Inc.? A. On August 13, 1943.

(891) Q. Can you tell us what Government's Exhibit 231 for identification is, sir? A. This is a release signed by Frank Costello in connection with the repurchase by Phonofilms of the 200 shares of common stock.

Mr. Seymour: That is sufficient.

If your Honor please, at this time the Government offers in evidence Exhibits 230 for identification and 231 for identification.

Mr. Fennelly: No objection.

(Marked Government's Exhibits 230 and 231 in evidence.)

Mr. Seymour: May I ask leave, at the conclusion of this witness's testimony, to substitute photostats?

The Court: Yes.

Q. Mr. Riker, I hand you Government's Exhibits 230 and 231, now in evidence.

Will you tell us first, sir, when the stock certificate issued to Frank Costello was surrendered? A. On August 13, 1943.

Q. Does the certificate itself bear the signature and the name Frank Costello? A. Yes, it does.

Q. Now, sir, can you tell us how much money was paid to Costello by the corporation for those shares? A. $2,780.

Q. When was that amount paid? (892) A. On August 13, 1943.

The Court: What is that figure?

The Witness: $2,780.

Mr. Seymour: I have no further questions.

John A. Riker—for Government—Cross

Cross-Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir, I didn't.

Q. Now, I notice that in this stock book, stock ledger of the—stock book, rather, of the Phonofilms Distributing Company, Exhibit 230, that this certificate No. 27 was apparently issued in replacement for a lost certificate No. 14. A. That is correct, sir.

Q. Is there another stock certificate book? Because I see the first one starting in this book starts with No. 26. A. Yes, there is, sir.

Q. Have you got that there? A. I do have, sir.

Q. Might I look at that? A. Yes. I think you will find the common there (indicating).

Mr. MacMahon: May we have it marked, your Honor?

The Court: He may look at it now.

Mr. Fennelly: Mark it for identification, please. Just the stub, that stub (indicating).

(893) Marked Defendant's Exhibit HH for identification.)

Q. In Defendant's Exhibit HH for identification is the stub of your stock book for certificate No. 14, is that right? A. That is correct.

Q. Can you tell us when the original certificate was issued? A. January 29, 1942.

Q. That was an original issue? A. That is correct.

Q. Now, have you books of account of Phonofilms Distributing Company, Inc.? Have you got a general ledger with you? A. No, I do not.

Q. Have you got a general ledger somewhere? A. I believe there is one in the records, yes.

Q. Have you got a minute book? A. I think that is still available.

Q. And wouldn't your general ledger, capital account, show for what that stock was issued? A. (No answer).

Q. Are you familiar with your general ledger, sir? A. I didn't handle the general ledger. No, I am not.

Q. Who handled the general ledger? A. Head of the accounting department.

Q. Do you know what the stock was issued for, according to your general ledger? (894) A. The stock was issued for the—you are talking of this particular certificate, sir?

Q. The certificate of original issue of January 29, 1942. A. That was issued in part-payment of the assets of Phonovision Corporation of America, which was Mr. Frank Orsatti's company, and which he sold to Phonofilms.

Q. Would you bring your general ledger, please? A. If I can locate it, I will, yes.

Q. Would you tell us, was Mr. Eric H. Haight—H-a-i-g-h-t—the president of your company? A. That is correct.

Q. Is he still alive? A. Yes, he is.

Q. What was the name of the man who handled the general ledger? Your bookkeeper or accountant, what was his name? A. Mr. Edly—E-d-l-y.

Q. And his first name? A. Alexander.

Q. Is he around? A. Yes, he has another position somewhere in the city.

Q. Where does he live, do you know? A. I don't have his address, no.

Mr. Fennelly: That is all, your Honor.

The Court: Any further questions?

Mr. Seymour: No, your Honor.

The only practical question I would like to raise (895) is whether the witness is permitted to take

his stock book, which has in it a leaf marked Defendant's Exhibit HH for identification. That stub that you had marked for identification.

May the witness take it with him? Those are stock books which he has to return.

Perhaps we could arrange to have a photostat made and substitute that.

Mr. Fennelly: All right.

The Court: All right. Very well. You are apparently finished for the time being anyhow.

Mr. Seymour: (To the witness) Would you leave these with me until the recess and I will arrange for photostats?

The Witness: Yes.

(Witness excused)

Mr. Christy: The Government calls John Rutherford.

JOHN EARLS RUTHERFORD, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Rutherford, where do you live? A. Tenafly, New Jersey.

Q. Whereabouts in Tenafly? A. 31 Burlington Road.

(896) Q. 31 Burlington Road? A. That is correct.

Q. Mr. Rutherford, where are you employed? A. Sheffield Farms.

Q. How long have you been with Sheffield Farms? A. Nine years.

Q. Do you have a position at Sheffield Farms? A. Yes, I do.

Q. What is that, sir? A. I am assistant controller.

Q. In your position as assistant controller do you have access to the books and records of Sheffield Farms, Inc.? A. I do.

Q. Have you brought certain books relating to the account of Mrs. Costello? A. I have.

Q. May I have them, sir? A. (Indicating).

Mr. Christy: Your Honor, may I mark this box as one exhibit?

The Court: Certainly may.

(Marked Government's Exhibit 232 for identification.)

Mr. Christy: May the record indicate that Government's Exhibit 232 for identification contains 18 books?

Q. Mr. Rutherford, I hand you Government's Exhibit 232 for identification and I ask you if you will tell us what these books are inside of the exhibit. (897) A. They are route books kept—

Q. They are route books? A. Route books, which is a record kept by our route employees, showing service to customers.

Q. They are kept by your drivers of your trucks? A. That is correct.

Q. Are these route books records kept in the regular course of business? A. They are.

Q. Is it the regular course of business to keep such route books? A. That is correct.

Q. Do all these route books show entries for Mrs. Costello? A. They do.

Q. Will you look at the first book in that exhibit and tell us the date covered by that book. A. This covers the months of December, 1946, and January, 1947.

Q. Will you tell us the entries on the last book? A. The dates?

Q. Yes. A. October, 1949, and November, 1949.

Q. And each one of those books covers a period of two months, is that correct? A. That is correct.

Q. Mr. Rutherford, are the books, individual books, in chronological order? A. They are.

Mr. Chirsty: Your Honor, I would like to substitute photostats of the pages, pertinent pages (898) from these books in lieu of these books. The photostats are in—I will have these marked for identification.

The Court: Better ask the witness about them and identify what they are.

Mr. Christy: Mark those 232-A for identification. Staple them all together.

(Marked Government's Exhibit 232-A for identification.)

Q. Mr. Rutherford, I show you Government's Exhibit 232-A and ask you if those are photostats of the pages from Government's Exhibit 232 for identification that you have just identified. A. They are.

Q. And are those accurate photostats? A. They are.

Q. Have you checked them against the books? A. I have.

Q. Are those photostats in chronological order? A. They are.

Q. So that the first—

The Court: Are they photostats of the pages which reflect transactions between your company and Mrs. Costello?

The Witness: They are.

Q. The books which you have identified have the date on the outside, the two months which that book (899) covers? A. That is correct.

Q. Is there any corresponding date on those individual sheets or the individual sheets which are in these books? A. Is there a corresponding month?

Q. Is there any indication on those sheets, which are photostats of the sheets in here, as to what period they cover? A. No.

Q. There is not? A. No. The day.

Q. Days, but not by year. A. No.

Q. But these photostats are arranged in chronological order? A. Yes.

Q. So that the first photostat would cover the period December, 1946, and January, 1947, is that correct? A. That is correct.

Mr. Christy: At this time the Government offers Government's Exhibit 232 for identification in evidence.

The Court: 232-A, isn't it?

Mr. Christy: 232-A, your Honor.

Mr. Fennelly: No objection.

(Marked Government's Exhibit 232-A in evidence.)

Q. Mr. Rutherford, referring to Government's Exhibit 232 in evidence, this first sheet would represent the months of December, 1946, and January, 1947? A. That is correct.

John E. Rutherford—for Government—Cross

Q. And each successive sheet would represent (900) two additional months? A. That is right.

Q. Can you tell from these sheets what amount was paid? Is there a figure entered where there is a payment? A. The figure along the bottom line, that amount shows payments.

Q. Where it says "cash"? A. That is correct.

Q. That figure on that line under the date above is the amount that was paid? A. That is correct.

Q. Mr. Rutherford, have you computed the amount that was paid on this account for the years 1946 through 1949? A. We have.

Q. Will you tell us how much was paid in 1946? A. 1946 was $8.46.

Q. 1947? A. 1947 was $258.67.

Q. 1948? A. $376.93.

Q. 1949? A. $142.97.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I did not.

Mr. Fennelly: That is all.

The Court: Very well. You may step down.

Mr. Christy: Thank you, Mr. Rutherford.

(Witness excused)

(901) Mr. Christy: The Government calls Arthur Murphy.

Arthur I. Murphy—for Government—Direct

ARTHUR I. MURPHY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Murphy, where do you live? A. I live in Union City. Do you want the local address?

Q. Yes. A. 1209 Palisades Avenue, Union City, New Jersey.

Q. And where are you employed, sir? A. Charvet and Fils, 18 East 53rd Street.

Q. How long have you been with Charvet, sir? A. About 31 years, sir.

Q. Do you hold a position at Charvet? A. I do, sir.

Q. What is that? A. I am treasurer. Office of treasurer.

Q. What does Charvet sell? A. We are primarily shirtmakers and we have haberdashery aside from that.

Q. Will you keep your voice up just a little bit so the last juror in the box can hear you? In your position as treasurer, are you familiar with the books and records of Charvet? A. I am, sir.

(902) Q. Have you brought with you a record dealing with the account of Frank Costello? A. I have it here.

Q. May I have it, sir? A. (Witness hands.)

(Marked Government's Exhibit 233 for identification.)

Q. Mr. Murphy, I hand you Government's Exhibit 233 for identification and ask you if you will tell us what that is? A. Well, this is a ledger sheet taken from our ledger in the account of Frank Costello, 115 Central Park West, New York City.

Q. Is that ledger sheet, Government's Exhibit 233, a record kept in the regular course of Charvet's business? A.

This is the regular sheet identical to all other accounts we have.

Q. Does that show payments on that account? A. That does, sir.

Q. Is it the regular course of Charvet's business to keep such a record? A. It is, sir.

Mr. Christy: Your Honor, the Government offers in evidence 233 for identification.

Your Honor, the Government will restrict that offer to only such part of the record that covers the years through 1949.

The Court: Beginning when?

Mr. Christy: The year 1946.

(903) The Court: Very well.

Mr. Christy: May we substitute a photostat?

The Court: You may, in which you will block out anything outside of the period.

Mr. Christy: Blocked out; yes, your Honor.

Mr. Fennelly: No objection.

(Government's Exhibit 233 for identification received in evidence.)

Q. Mr. Murphy, have you computed the totals that were paid on this account? A. I have, sir, yes.

Q. Will you tell us how much was paid in 1946? A. In 1946 there was $85.68.

Q. And in 1949? A. In 1949 there was $38.25.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I did not.

Q. Might I see your sheet again, please? A. Surely (handing).

Mr. Fennelly: Did the Government offer all of this?

Mr. Christy: No, the Government restricts its offer only for the years 1946 through 1949.

Mr. Fennelly: Through 1949. You include 1948.

(904) Q. Now, there are some items on here that you weren't asked about, weren't there, for 1948 (handing)? A. Well, the only items in 1948 are credits.

Q. I see. And up on the top I see "Wife, Mrs. Loretta." Did she buy some of the ties? A. Yes, I believe she did, sir.

Mr. Christy: No further questions.

The Court: Thank you.

The Witness: Thank you, your Honor.

Mr. Christy: Thank you, Mr. Murphy.

(Witness excused.)

Mr. Christy: The Government calls John J. Moore.

JOHN J. MOORE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Will you keep your voice up just a little so the last man in the jury box can hear you?

Mr. Moore, where do you live? A. 229 West 78th Street, New York City.

Q. Where are you employed, sir? A. New York Hospital.

Q. How long have you been with the New York Hospital? (905) A. 27 years.

Q. And what position do you hold up there? A. Manager of accounts.

Q. In this position as manager of accounts; are you familiar with the records kept by New York Hospital? A. I am.

Q. Do you know if Mrs. Loretta Costello was a patient in New York Hospital some time ago? A. She was.

Q. Have you brought with you the ledger sheet dealing with her record? A. I have (handing).

(Marked Government's Exhibit 234 for identification.)

Q. Mr. Moore, I hand you Government's Exhibit 234 for identification and I ask you if you will tell us what that is? A. This is a patient's account card.

Q. I beg your pardon? A. Patient's account card.

Q. Account card? A. Yes, sir.

Q. And that reflects the day the patient came in? A. It does.

Q. And the day the patient left? A. Yes, sir.

Q. And the amount paid? A. Yes, sir.

Q. Is that account card a record kept in the regular course of the hospital's business? A. It is.

Q. Is it the regular course of ~~the~~ hospital's business to keep such records? A. Yes, sir.

(906) Q. And what year is reflected on that card? A. 1945.

Mr. Christy: The Government offers Government's Exhibit 234 for identification in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: This isn't one of the prosecution years?

Mr. Christy: I beg your pardon, your Honor?

The Court: This isn't one of the prosecution years?

Mr. Christy: This is not one of the prosecution years, no, your Honor.

The Court: How about that?

Mr. MacMahon: Your Honor, the problem, as you know, in going into the prosecution years is to exclude accumulated resources as of the beginning of the prosecution years. And to do that we have to spend what money was available in pre-prosecution years, your Honor. And, therefore, this card, this account is equally relevant.

The Court: That is true, but all the way through, in all of these accounts, this is the second one I recall, all the others you restricted by a prosecution year.

Mr. MacMahon: We did not restrict it; we (907) happened to have no proof of earlier expenditures.

The Court: Oh, I thought you restricted it.

Mr. MacMahon: No.

The Court: Very well. All right.

(Government's Exhibit 234 for identification received in evidence.)

Q. I show you Government's Exhibit 234 in evidence and ask you if you would tell us, according to that record, how much was paid? A. $40.

Q. And on what date, sir? A. On March 14, 1945.

Q. 1945? A. Yes, sir.

Q. And does that record indicate the doctor that was in attendance for Mrs. Costello? A. Yes.

Q. What is his name? A. Dr. Gervais McAuliffe.

John J. Moore—for Government—Cross
James Downey—for Government—Direct

Mr. Christy: Your Honor, may we substitute a photostat?

The Court: Yes.

Mr. Christy: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. And this bill is just for one day in the hospital, isn't it? A. Yes, sir.

Q. And just for room and board? A. Yes, sir.

Q. And that is your regular rate, isn't it? (908) A. That is for the type of occupation—or type of accommodation that the patient had.

Mr. Fennelly: That is all.

The Court: Very well.

Mr. Christy: Thank you, Mr. Moore.

(Witness excused.)

Mr. Christy: The Government calls James Downey.

James Downey, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Downey, where do you live? A. Pleasantville, New York.

Q. Have you a street address? A. 85 Martling Avenue.

Q. Mr. Downey, where are you employed? A. Cavanagh Hat Store, 247 Park, New York City.

Q. How long have you been with Cavanagh Hats? A. Nine years.

Q. Do you have a position there? A. I am assistant manager.

Q. Mr. Downey, in your position as assistant manager, do you have access to the books and records of Cavanagh? A. Yes, I do.

(909) Q. Are you familiar with those? A. Yes, I am.

Q. Mr. Downey, did Mr. Frank Costello have an account there? A. He didn't have a charge account, no.

Q. He had an account, though? A. We keep what we call a customer's card record of every purchase whether it is charge or cash.

Q. And have you brought those cards with you? A. Yes, I have.

(Marked Government's Exhibits 235 and 235-A for identification.)

Q. Mr. Downey, I show you Government's Exhibits 235 and 235-A for identification and I ask you if those are the account cards that you kept for Frank Costello? A. They are.

Q. Are those account cards records kept in the regular course of business? A. Yes.

Q. Is it the regular course of Cavanagh's business to keep such records? A. That is right.

Q. What period do those cards cover? A. 1945 through 1951.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 235 for identification and so much of 235-A for identification as covers the period through 1949. And may we substitute appropriately blocked out photostats?

James Downey—for Government—Cross

(910) The Court: You may.

Mr. Fennelly: I have no objection, your Honor, except to a notation here about a business address. I don't know whether the Government is offering that.

Mr. Christy: Your Honor, the Government is offering everything on the card except the years subsequent to 1949.

The Witness: That isn't intended to be a business address; that is merely an address we had sent a hat.

The Court: Regardless of what it is supposed to be it will be stricken out. It is obvious that is has no competency whatever to the standpoint of this case.

Mr. Christy: I will have the photostat appropriately blocked out.

The Court: Yes.

(Government's Exhibits 235 and 235-A for identification received in evidence.)

Q. Mr. Downey, have you computed how much was paid on this account in the years 1945 through 1949? A. I have.

Q. Will you tell us how much was paid in 1945? A. $40.

(911) Q. And in 1946? A. $60.

Q. 1947? A. $15.

Q. 1948? A. $40.

Q. And 1949? A. $20.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I didn't, sir.

Q. How long have you lived in Pleasantville? A. Ten years.

Mr. Christy: No further questions, your Honor. Thank you Mr. Downey.

(Witness excused.)

The Court: Well, we will take five minutes extra this afternoon. It is getting too warm.

All right, ladies and gentlemen, we are off until tomorrow. Remember the instructions, don't talk about the case among yourselves or with anybody else, and keep your minds completely open until all evidence is in. 10.30 tomorrow morning.

(Adjourned to April 22, 1954, at 10.30 a.m.)

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(912) New York, April 22, 1954, 10.30 a.m.

(Trial resumed)

(Jury present)

The Clerk: If there are any witnesses present in the court room at this time, they will please retire to the witness room.

Mr. Christy: The Government calls Miss Ida Lerman.

Ida Lerman—for Government—Direct

IDA LERMAN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Lerman, where do you live? A. 6574 Wetherall Street, Forest Hills.

Q. Where are you employed? A. Hale's Bedding Stores, Inc.

Q. Where is that located? A. 605 Fifth Avenue.

Q. New York City? A. New York City.

Q. How long have you been with Hale's? A. Three and one-half years.

(913) Q. Do you hold a position up there? A. Yes.

Q. What is that, Miss Lerman? A. Bookkeeper.

Q. In your position of bookkeeper do you have access to the books and records of Hale's? A. Yes, I do.

Q. Are you familiar with those records? A. Yes, I am.

Q. Are you familiar with the system of records maintained by Hale's going back about 10 or 11 years? A. Yes.

Q. Miss Lerman, have you brought certain records in connection with the account of Mrs. Costello? A. Yes, I have.

(Marked Government's Exhibit 236, 236-A through 236-G for identification.)

Q. Miss Lerman, I show you Government's Exhibit 236-D, B and F, and 236 for identification, and I ask you if you will tell us what they are. A. These are sales orders.

Q. Sales orders? A. Yes.

Q. On whose account are they? A. Mrs. Frank Costello's.

Q. All four of them?

The Court: Keep your voice up, please.

A. Mrs. Frank Costello's. All but, I think, one. (914) One is Mrs. Loretta Costello.

Q. What is the date on 236? A. May 8, 1944.

Q. And on 236-B? A. May 2, 1945.

Q. And on 236-D? A. September 28, 1948.

Q. And F?

The Court: Just a minute. What's that last?

The Witness: September 28, 1948.

Q. And on 236-F? A. February 7, 1949.

Q. I show you Government's Exhibit 236-A for identification and ask you if you will tell us what that is. A. That is the ledger sheet, the posting copy.

Q. Is there a date on that? A. Yes.

Q. What is that date? A. May 15, 1944.

Q. I show you 236-C. What is that? A. That is also a ledger sheet.

Q. What is the date on that? A. May 3, 1945.

Q. I show you 236-G. Will you tell us what that is? A. Posting ledger sheet.

Q. That is a ledger sheet? A. Yes.

Q. What is the date on that one? A. February 8, 1949.

Q. Miss Lerman, did you find a ledger sheet for the year 1948? A. I could not locate it.

Q. You tried and you were unable to find it, is that correct? A. That is correct.

(915) Q. I show you Government's Exhibit 236-E and I ask you if you will tell us what that is. A. That is a delivery slip made by our delivery service.

Q. Miss Lerman, will you keep your voice up—

The Court: I did not hear that answer.

(Record read)

Q. (Continuing) —so the last juror in the jury box can hear you. This is a delivery receipt? A. That is right.

Q. What is the date on that? A. September 30, 1948.

Q. Is that for the account of Mrs. Costello? A. That is correct.

Q. Miss Lerman, are these exhibits which you have identified, Government's Exhibits 236 and 236-A through G records kept in the regular course of Hale's business? A. Yes.

Q. And is it the regular course of Hale's business to keep such records? A. Yes.

Mr. Christy: Your Honor, at this time the Government offers Exhibits 236-E, 236-B, 236-D, 236-F and Government's Exhibit 236, and so much of Government's Exhibits 236-A, 236-G and 236-C as apply to the account of Mrs. Costello.

The Court: Very well.

(916) Mr. Christy: And may we substitute appropriately blocked-out photostats?

The Court: You may do so.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 236, 236-A through 236-G for identification received in evidence.)

Q. Miss Lerman, I show you Government's Exhibit 236 in evidence and I ask you what is the total purchase price on that sales order. A. $12.88.

Q. And what is the date of that sales order? A. May 8, 1944.

Q. I show you Government's Exhibit 236-A in evidence and I ask you if that ledger sheet shows a payment of $12.88 in 194. A. Yes, it does.

Q. I show you Government's Exhibit 236-B in evidence and ask you if that shows a sale. A. Yes.

Q. Of how much? A. $217.15.

Q. And what is the date? A. May 2, 1945.

Q. I show you Government's Exhibit 236-C in evidence, which is the ledger sheet, and I ask you if that shows a payment in 1945 of $217.15. A. Yes, it does.

Q. I show you Government's Exhibit 236-D in evidence (917) and ask you what the figure on that sales order is. A. $188.70.

Q. I show you Government's Exhibit 236-E in evidence, which is a delivery receipt, and ask you if that shows a payment of $188.70. A. Yes.

Q. And what is the date on that? A. September 30, 1948.

The Court: What is the amount of it?

Mr. Christy: $188.70, your Honor.

Q. I show you Government's Exhibit 236-F in evidence and ask you if that has a figure on it. A. Yes, it does.

Q. How much is that? A. $212.98.

Q. Is that "8" blocked out? It is $212.9? A. "9."

Q. I show you Government's Exhibit 236-G, a ledger sheet, and does that show a payment on there for $212.98? A. Yes, it does.

Q. What date is that? A. March 14, 1949.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I didn't.

Mr. Christy: Thank you, Miss Lerman.

(918) The Government calls John Hartmann.

John Hartmann—for Government—Direct

JOHN HARTMANN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Hartmann, where do you live? A. I reside at 64 South Drive, Rochelle Park, New Jersey.

Q. Where do you work, sir? A. I work for the firm of Goldfarb Flower Shops located at 160 East 57th Street, New York City.

Q. Are you the office manager at Goldfarb? A. That is correct, sir.

Q. How long have you been at Goldfarb? A. I have been with the firm for 20 years.

Q. In your position as office manager are you familiar with the books and records of Goldfarb? A. I am, sir.

Q. Do you have access to those records? A. I do.

Q. Did Mrs. Costello have an account at Goldfarb? A. Mrs. Costello did maintain a charge account with our firm, yes, sir.

Q. And have you brought with you the ledger card dealing with that account? A. I have it here, sir.

Q. May I have it, sir? A. (Witness hands to (919) Mr. Christy.

(Marked Government's Exhibits 237, 237-A and 237-B for identification.)

Q. Mr. Hartmann, I show you Government's Exhibits 237, 237-A and 237-B for identification, and I ask you if those are the ledger cards of the account of Mrs. Costello. A. These are the ledger cards of Mrs. Costello.

Q. And do they cover the year 1937? A. 1937? Yes, sir, they do.

Q. And do they go through the year 1949? A. Through the year nineteen forty—through 1949, yes, sir.

Q. And in what name were those accounts maintained? A. The accounts were maintained in the name of Mrs. Frank, wife's name, Loretta Costello.

Q. What address? A. At No. 115 Central Park West, Apartment 18F.

Q. Are these records kept in the regular course of Goldfarb's business? A. They are, sir.

Q. Is it the regular course of Goldfarb's business to keep such ledger cards? A. It is necessary to keep such records, yes, sir.

Mr. Christy: Your Honor, the Government offers 237 for identification or only so much of it as applies (920) after October 18, 1937, and 237-A and 237-B or so much of it as runs through the year 1949.

Mr. Fennelly: I object to them as irrelevant and immaterial. I also think there should be deleted from them the names of the people to whom the flowers were sent.

Mr. Christy: The Government has no objection to that, your Honor.

The Court: All right. As to their relevance and materiality, I overrule that. The suggestion that you make, Mr. Fennelly, Mr. Christy says he will go along with.

Mr. Christy: May we substitute appropriately blocked-out photostats?

The Court: Yes.

(Marked Government's Exhibits 237, 237-A and 237-B in evidence.)

Q. Mr. Hartmann, from Government's Exhibits 237, 237-A and 237-B now in evidence, have you made certain com-

putations as to the annual totals? A. I have the totals for the purchases for the designated years.

Q. Will you tell us the total in 1937 subsequent to October 18th? A. For the months of October, November in the year 1937, total purchases, a total amount (921) paid in the sum of $35.31.

Q. In 1938 will you just give us the total figure? A. Total figure 1938, $57.17.

Q. And 1939? A. $80.96.

Q. 1940? A. $41.94.

Q. 1941? A. $15.03.

Q. 1942? A. $40.42.

Q. 1943? A. $68.90.

Q. 1944? A. $42.16.

Q. 1948? A. $111.78.

Mr. Fennelly: What year?

Mr. Christy: 1948.

The Witness: 1948, that was.

Mr. Fennelly: I didn't get the figure.

Mr. Christy: $111.78.

Q. Is that correct? A. That is correct, sir, $111.78.

Q. And 1949? A. $8.16.

Q. Mr. Hartmann, the payment that you gave for 1937, those payments were made subsequent to October 18th, is that correct? A. October 18th?

Q. On Government's Exhibit 237 you will notice a payment on November 16th of $21.89, is that correct? A. That is right.

Q. And on December 4th $13.42. A. That is in (922) 1937, that is right.

Q. So that the total paid subsequent to October 18th would be the figure that you gave us? A. That is correct, sir.

John Hartmann—for Government—Cross
Cecil N. Whitehorne—for Government—Direct

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. Please repeat that question, sir.

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No, sir.

The Court: Any further questions?

Mr. Fennelly: No questions.

The Court: All right, you may go.

Mr. Christy: Just a minute, Mr. Hartmann. Let return these records to you.

The Witness: Thank you.

(Witness excused.)

Mr. Christy: The Government calls Norman Whitehorne.

Cecil Norman Whitehorne, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

(923) Q. Mr. Whitehorne, will you keep your voice up so the last member of the jury may hear you? Where do you live Mr. Whitehorne? A. 9144 114th Street, Richmond Hill.

Q. Where are you employed, sir? A. Farmer & Ochs.

Q. How do you spell that? A. O-c-h-s.

Q. Where is Farmer & Ochs located? A. 130 William Street.

Cecil N. Whitehorne—for Government—Direct

Q. How long have you been with Farmer & Ochs? A. 27 years.

Q. Are you the bookkeeper at Farmer & Ochs? A. Yes, sir.

Q. Will you tell us just briefly what business Farmer & Ochs is in? A. Insurance brokers.

Q. In your position as bookkeeper at Farmer & Ochs do you have access to the books and records— A. Yes, sir.

Q. —of Farmer & Ochs? A. Yes.

Q. Are you familiar with those records? A. Yes, sir.

Q. Do you know if Farmer & Ochs handled some insurance for Mrs. Costello? A. Yes, sir.

Q. Have you brought the cards relating to this account? A. I have.

(924) (Marked Government's Exhibits 238 and 238-A for identification.)

Q. Mr. Whitehorne, I show you Government's Exhibit 238 for identification and ask you if that is the ledger card of Mrs. Costello's account. A. That is the card we recorded the policies.

Q. What is the first date on that card? A. February 13, 1943. 17th, excuse me—February 17th.

Q. Does that contain the insurance that was obtained by Mrs. Costello? A. Yes, sir.

Q. I show you Government's Exhibit 238-A for identification and ask you if that is also a ledger card kept for Mrs. Costello's account? A. It is.

Q. And does that show payments on it? A. It does.

Q. What is the first entry on that card? A. February 17, 1946.

Q. Mr. Whitehorne, are these two ledger cards records kept in the regular course of Farmer & Ochs' business? A. They are.

Cecil N. Whitehorne—for Government—Direct.

Q. And is it the regular course of Farmer & Ochs' business to keep such ledger cards? A. Yes.

Mr. Christy: Your Honor, the Government offers Exhibits 238 and 238-A for identification, or only so much of them as applies to the years 1946 through 1949.

The Court: Very well.

(925) Mr. Christy: May we substitute appropriately blocked-out photostats.

The Court: You may.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Marked Government's Exhibits 238 and 238-A in evidence.)

Q. Mr. Whitehorne, I show you Government's Exhibits 238 and 238-A in evidence, and ask you what name they are carried in. A. Loretta B. Costello.

Q. What is the address on 238? A. 115 Central Park West, New York City.

Q. And 238-A? A. 5 Bakers Place Road.

Q. Could that be Barkers Point? A. Barkers Point Road, Fort Washington, New York.

Q. From Government's Exhibit 238-A can you tell us how much was paid by Mrs. Costello in the year 1946? A. $154.

Q. How much was paid in the year 1949? A. $56.25.

The Court: '49?

The Witness: Yes, sir.

Mr. Christy: No further questions, your Honor.

Cecil N. Whitehorne—for Government—Cross
Joseph Kretz—for Government—Direct

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that (926) returned the indictment in this case? A. No, sir, I did not.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Whitehorne.

(Witness excused)

Mr. Christy: The Government calls Joseph Kretz.

JOSEPH KRETZ, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Kretz, will you keep your voice up a bit, please? A. Yes.

Q. Where do you live, sir? A. At 120 Cabrini Boulevard.

Q. 120 Cabrini Boulevard? A. That is right.

Q. Where do you work, Mr. Kretz? A. At 438 East 91st Street.

Q. What is the name of the company? A. A. J. Miller & Company.

Q. A. J. Miller & Company? A. Right, yes.

Q. And are you a partner in A. J. Miller & Company? A. Correct.

Q. How long have you been with Miller? A. Since 1929.

(927) Q. Would you tell us, briefly, what business A. J. Miller & Company is in? A. Interior decorating, upholstering, restoring of furniture in general.

Q. Mr. Kretz, did you have an account with Mrs. Costello? A. Yes.

Q. As a partner of A. J. Miller are you familiar with the books and records of Miller? A. Yes.

Q. And you have access to them? A. Yes.

Q. Have you brought the ledger cards relating to the account of Mrs. Costello? A. Yes.

(Marked Government's Exhibits 239 and 239-A for identification.)

Q. Mr. Kretz, I show you Government's Exhibits 239 and 239-A for identification and I ask you if those are the ledger cards kept for the account of Mrs. Costello. A. That is correct.

Q. Of 115 Central Park West? A. Correct.

Q. And what years do they cover? A. 1946, 1947, '48, also '49.

Q. 1946 through 1949? A. Yes.

Q. Are these ledger cards, Government's Exhibits 239 and 239-A, records kept in the regular course of Miller's business? A. Yes.

Q. And is it the regular course of Miller's business (928) to keep such records? A. Yes.

Mr. Christy: Your Honor, the Government offers Government's Exhibits 239 and 239-A for identification in evidence.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Marked Government's Exhibits 239 and 239-A in evidence.)

Joseph Kretz—for Government—Cross

Mr. Christy: May we substitute photostats, your Honor?

The Court: You may.

Q. Mr. Kretz, from Government's Exhibits 239 and 239-A now in evidence, have you made computations as to the total amounts paid in each of the years 1946 through 1949? A. Yes.

Q. Will you tell us how much was paid in 1946, sir? A. $216.

Q. How much was that, sir? A. $216.

Q. And in 1947? A. $821.35.

Q. And in 1948? A. $60.

Q. And 1949, sir? A. $157.

Q. $157? A. Yes.

Cross-Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that (929) returned the indictment in this case? A. No, sir.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Kretz.

(Witness excused)

The Court: We will take our recess now, ladies and gentlemen.

(Recess)

Mr. Christy: Your Honor, the Government calls William Perry.

William A. Perry—for Government—Direct

WILLIAM A. PERRY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Perry, where do you live? A. At 28 Riverview Drive, Upper Montclair, New Jersey.

Q. Where are you employed, sir? A. Prudential Insurance Company in Newark.

Q. At where, sir? A. Newark.

Q. The Prudential Insurance? A. That is correct.

Q. How long have you been with Prudential? A. 41 years.

Q. What is your position over there? A. Supervisor of premium billings and accounting.

Q. In this position do you have access to the records (930) kept by the Prudential? A. I do.

Q. And are you familiar with those records? A. I am.

Q. Did Prudential write a policy on the life of Mrs. Costello? A. They did.

Q. And have you brought with you the records pertaining to that policy? A. I have them, sir.

Q. May I have them, sir?

(Witness hands to Mr. Christy)

(Marked Government's Exhibits 240, 240-A and 240-B for identification.)

Q. Mr. Perry, I show you Government's Exhibit 240 for identification and I ask you if that is the policy that was written for Loretta Costello? A. It is.

Q. And what is the date of that, sir A. The date of this is 16th day of July, 1940.

Q. I show you Government's Exhibit 240-A for identi-

fication and I ask you if you will tell us what that is. A. That is an application which was made by Loretta B. Costello for the policy which was issued.

Q. I show you Government's Exhibit 240-B for identification and ask you what that is. A. That is the record that we keep of the policy since the date of issue, a record of premium payments.

Q. And does that show that the payments from 1940 (931) through 1949? A. It does.

Q. Does that have Mrs. Costello's name and address at the top? A. It does. Mrs. Loretta B. Costello, 115 Central Park West, New York City, New York.

Q. Are Government's Exhibits 240-A and 240-B records kept in the regular course of business? A. They are.

Q. And after a policy has matured, is that kept in the regular course of business? A. This is the policy that was issued to Mrs. Costello but surrendered in '52, when the policy matured.

Q. But the policy, while it is in force, is with the insured? A. That is correct.

Q. But when it is surrendered it is retained by the company? A. That is correct.

Q. And is the record kept in the regular course of business? A. That is correct.

Q. And it is the regular course of business of Prudential to keep these records, is that correct? A. That is correct.

Mr. Christy: Your Honor, at this time the Government offers Government's Exhibits 240, 240-A and 240-B for identification in evidence.

And may we substitute photostats at the close of Mr. Perry's testimony, your Honor?

(932) The Court: You may.

Mr. Fennelly: I object to them as being irrelevant and immaterial, and specifically as to Nos. 240 and

240-A, I think they contain a lot of information, for instance, his age, which have no part of the case.

The Court: The purpose of the testimony is to show, I suppose, either expenditure by Mrs. Costello or the receipt of some money at the time the policy was surrendered.

Mr. Christy: That is right, your Honor.

The Court: I don't think you will need the policy and the application for that.

Mr. Christy: Your Honor, on the application we would be willing to offer the application blocked out except for item 5 under part 2.

The Court: All right.

Mr. Christy: As to the competency of the application—

The Court: Indicate that to me, the part you are talking about. You mean on this reverse side?

(Mr. Christy approaches the bench and indicates to the Court.)

The Court: Oh, I see. Yes; Mr. Christy calls my attention to the part marked "Part 2" on the reverse of it. I think that is material here, quite.

(933) The parts that you think are otherwise unimportant, Mr. Christy says he is agreeable to strike out any of that.

Mr. Christy: We will also offer on that reverse side Question 8 under Part 1.

The Court: Yes, I will allow that.

I take it that the policy as such is not objectionable to you except on your general theory that anything pertaining to Mrs. Costello is immaterial and irrelevant here. But what you object to, with respect to Exhibit 240 for identification, which is the policy